



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153500

PRELIMINARY RECITALS

Pursuant to a petition filed November 15, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on December 12, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,819 for the period April 1, 2013 – August 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Williamson

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. Petitioner received FS benefits during the period of 2011 – August, 2013. For the overpayment period of April, 2013 – August, 2013, the Petitioner received \$367/month in FS benefits. This was based on monthly household income of \$369.54 from child support payments.
3. On February 4, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$367/month in FS benefits for a household of two with income of \$369.54/month. It also informed the Petitioner that she was required to report if her income exceeded \$1,292.50/month and that such change was required to be reported within 10 days.
4. On February 18, 2013, the Petitioner started a new job with John Deere. On August 9, 2013, the Petitioner reported the new job to the agency.
5. On August 22, 2013, the agency received verification of the Petitioner's employment from her employer and a detail of actual gross wages earned for the period of February, 2013 – August, 2013. The Petitioner earned the following gross wages:

February, 2013	\$1,028.30
March, 2013	\$2,143.90
April, 2013	\$1,609.27
May, 2013	\$3,146.73
June, 2013	\$3,304.32
July, 2013	\$2,414.61
August, 2013	\$1,902.07
6. On August 26, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$369.54 for the period of April 1, 2013 – August 31, 2013.
7. On November 15, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

In this case, the agency asserts that the Petitioner was required to report her new job and the income she would receive from that job within 10 days. The FoodShare Handbook (FSH) states as follows:

All other food units are only required to report if their total monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL. As long as a food unit's total income is less than

130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc.

...

FSH § 6.1.1.2.

In February, 2013, the change reporting threshold of 130% of FPL was \$1,640 for a household size of two. FSH § 8.1.1. It is not clear to me what the source is for the agency's requirement to report if income exceeded \$1,292.50 as stated in the February 2, 2013 notice of decision. The agency determined the Petitioner was required to report the increased income for February, 2013 by March 10, 2013 because her gross income was \$1,397.84 (earned income of \$1,028.30 and unearned income of \$369.54). The change would affect her benefits starting in April, 2013. According to the evidence and the FSH, the Petitioner's income did not exceed 130% of FPL (\$1,640 for a household of two) so she was not required to report by March 10, 2013 and her benefits for April would not be affected.

However, in March, 2013, the Petitioner had earned income of \$2,143.90 and unearned income of \$369.54. Her monthly gross income exceeded 130% FPL so she was required to report the change by April, 2013. The change would affect her benefits beginning in May, 2013.

The agency provided the worksheets demonstrating its calculation of the overissuance. Based on the evidence, the agency properly seeks to recovery an overissuance of \$367/month from the Petitioner for May and June, 2013. Her income in those months exceeded the gross income limit of \$2,522 for a household of two making her ineligible to receive any FS benefits. The worksheet provided by the agency for July and August, 2013, contains no calculation of how it determined she was overpaid for those months. For July, 2013, the evidence establishes that Petitioner's gross income was \$2,784.15 (\$2,414.61 in earned income and \$369.54 in unearned income) which exceeds the gross income limit of \$2,522 for eligibility. On that basis, I can uphold the finding of an overissuance of \$367 for July, 2013. For August, 2013, the evidence establishes that Petitioner's gross income was \$2,271.61 (\$1,902.07 in earned income and \$369.54 in unearned income). Based on the evidence, she was under the gross income limit of \$2,522 so she may have been eligible for FS benefits. I cannot determine from the evidence how the agency concluded that the Petitioner was overissued \$367 for the month of August, 2013.

The evidence establishes that the Petitioner was required to report her job and income by April 10, 2013 because her gross monthly income in March exceeded 130% of the FPL. Her failure to timely report resulted in an overissuance of benefits of \$367/month for May, June and July, 2013. The agency's evidence does not establish that the Petitioner's income exceeded 130% of the FPL in February, 2013. Because the Petitioner was not required to report the change in March, 2013, the agency may not recover an overissuance for April, 2013. Further, the agency evidence does not adequately establish that Petitioner was overissued \$367 for August, 2013. I cannot affirm the agency's recovery of benefits for that month.

CONCLUSIONS OF LAW

The Petitioner was overissued FS benefits in the amount of \$1,101 for the period of May, 2013 – July, 2013. The agency has not established an overissuance of \$351 for February, 2013 or \$367 for August, 2013. It may not recover an overissuance for those months.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period in this matter to May, 2013 – July, 2013 and revise the overpayment amount to \$1,101. This action shall be completed within 10 days of the date of this decision. The agency may not recover an overissuance for February, 2013 or August, 2013 from the Petitioner.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

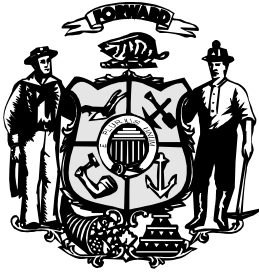
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of January, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 10, 2014.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability